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Supreme Court of the United States

October Term, 1970

GAINESVILLE UTILITIES DEPARTMENT,
CITY OF GAINESVILLE,

Petitioners,

v.

FLORIDA POWER CORPORATION.

FEDERAL POWER COMMISSION,

Petitioner,

v.

FLORIDA POWER CORPORATION.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR *AMICI CURIAE*,

American Electric Power Service Corporation
Duke Power Company
Middle South Utilities, Inc.
New England Power Company
Northeast Utilities
Ohio Edison Company
Pacific Gas and Electric Company
Southern California Edison Company
Virginia Electric and Power Company

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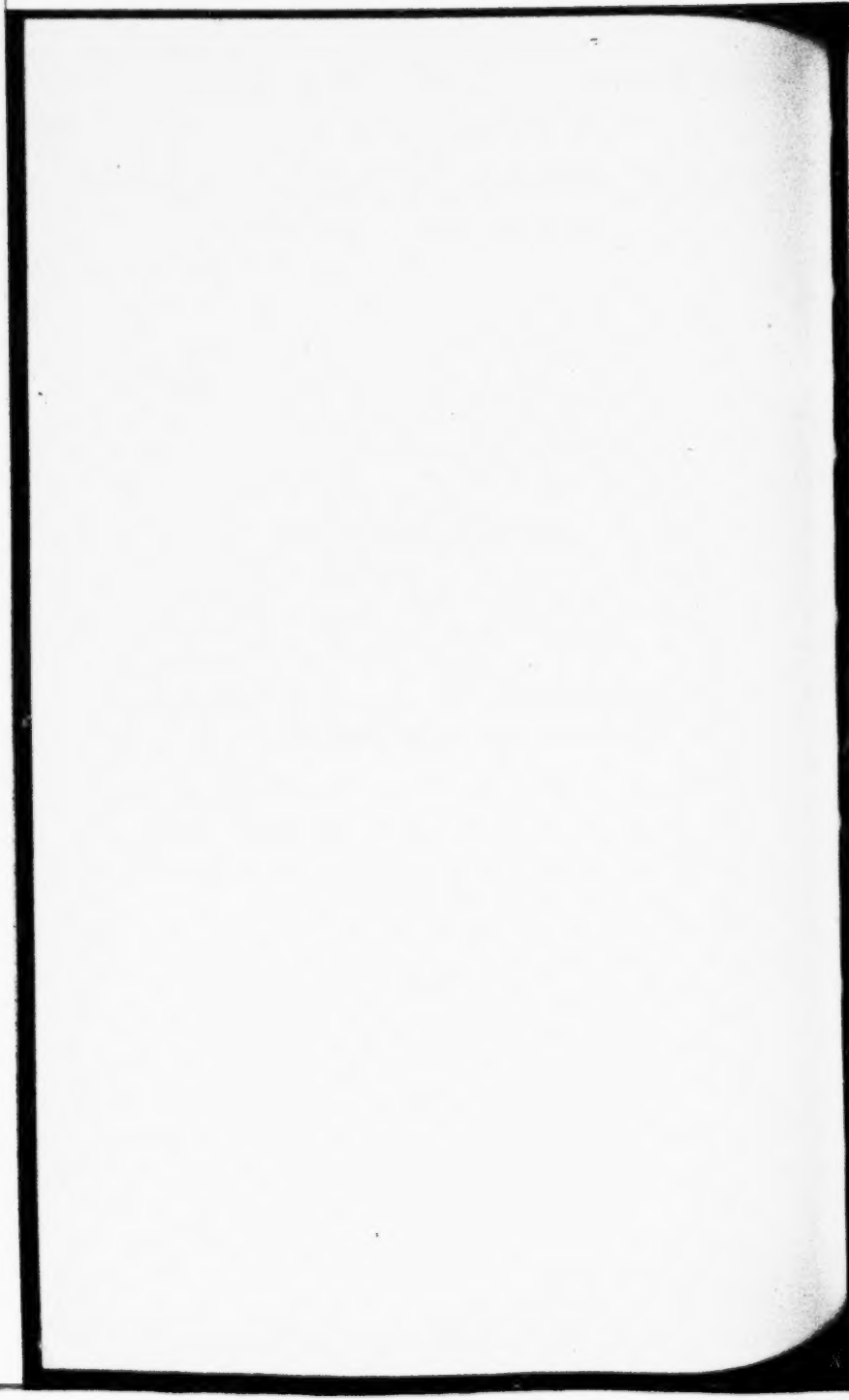

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Question Presented

Whether the Federal Power Commission may require that the customers of one electric utility system "must bear the

allocated fixed cost" of providing "extremely valuable" service to another electric utility system, notwithstanding the fact that the Act requires, as a matter of law, that the costs of the utility supplying such valuable service shall be "apportioned" and that it shall receive "the compensation or reimbursement reasonably due" it.[1]

The Interest of the *Amici Curiae*

The *amici curiae* believe that the Court below properly held that the Commission had failed to make provision for the "compensation or reimbursement reasonably due" Florida Power and that the case should be remanded to the Commission. They, therefore, urge that the decision of the Court below be affirmed.

The Commission purports to rely not upon its own expertise but upon what it alleges is "the generally prevailing practice in the industry" (Commission brief, at 12).[2] The *amici curiae* presenting this brief are electric utility systems which operate in virtually all areas of the country and serve approximately 40,000,000 people. Each of the systems has multiple electrical interconnections between its

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[1] The first two quotations in the "Question Presented" are from the holding of the Court of Appeals for the Fifth Circuit (App. 502-3), 425 F.2d 1196, 1203, which speaks solely in terms of the Federal Power Commission having failed to take into account *costs* other than direct (or incremental) costs of Florida Power as a part of the compensation reasonably due Florida Power. The second two quotations are from section 202(b) of the Federal Power Act, 16 U.S.C. 824a(b) which establishes the standard for compensation.

[2] Elsewhere the Commission brief states:

"In contested interconnection cases, therefore, it is appropriate that Commission decisions establishing compensation terms take into account the terms of current interconnection arrangements negotiated at arm's length." (at 19) We agree. But this is precisely what the Commission failed to do in this case.

facilities and facilities of other electric utility systems which are governed by contracts specifying the terms and conditions of interconnected operation. The program of interconnection by electric utilities has been undertaken under the express policy of Congress set forth in section 202(a) of the Federal Power Act, 16 U.S.C. 824a(a), to foster and encourage "the voluntary interconnection and coordination of facilities for the generation, transmission and sale of electric energy." As a result of the program of voluntary interconnection of electric utility systems, approximately 99% of the people in the United States are now served by electric utilities which have interconnections with one or more other electric utilities governed by thousands of interconnection agreements.

In contrast to section 202(a), section 202(b) of the Federal Power Act, 16 U.S.C. 824a(b), the authority upon which the Commission relies in this case, provides that the Commission may order a public utility to interconnect its facilities with those of another system, but only upon application therefor and only if the Commission finds no "undue burden" will be created on the utility being required to interconnect. Under the section, the Commission may also prescribe the terms and conditions to govern the interconnection, "including the apportionment of cost between them and the compensation or reimbursement reasonably due to any of them." Of the approximately two hundred million people in the country receiving electric service, at most a few thousand may be served by systems with which the Commission has ordered a public utility to interconnect upon terms and conditions specified by it under section 202(b).

So successful and universal a program of voluntary interconnection has only been achieved because the economic arrangements underlying such interconnections have provided a reasonable apportionment of costs and reasonable

compensation or reimbursement (in money or services) for the services supplied. By seeking to impose terms and conditions which do not meet the statutory test of reasonable compensation, the Commission's order, if permitted to stand, would seriously impede the continued operation of voluntary interconnections of the industry as a whole (of which the *amici curiae* are a substantial part) and frustrate the Congressional mandate in both section 202(a) and section 202(b).

Statement of the Case

Florida Power is an electric utility corporation which serves 370,000 customers in the west, northwest and central sections of Florida (App. 354). In order to reduce to a minimum the amount of electric generating capacity required to provide a continuous power supply and thus to reduce the capital and operating costs associated with constructing and operating generating facilities, Florida Power has constructed a very substantial transmission system within its service area which, together with its numerous interconnections with other utility systems, permits the power requirements of particular regions in its service area to be supplied from a multiplicity of different sources.

To achieve this intended result—i.e., to have transmission capability available in a fraction of a second for delivery to a particular load center from one source when another source is forced out of service, Florida Power must provide a transmission system much larger than that which might be thought to be required for "normal" operating conditions.[1] The allocated cost of the essential reserve capacity

[1] The Commission itself has recognized the necessity for maintenance of such "margins of transmission capability". See, *post*, at 22.

in this transmission system at the time of Florida Power's peak load in 1970 (60% of the total cost of its transmission system) was estimated to be approximately $3.20 for each kilowatt of load Florida Power would supply (App. 192, Ex. 30). Power at 69 kv from three different directions is supplied from this transmission system to Florida Power's Gainesville substation which serves load in and around the City of Gainesville (App. 161-2).

The City of Gainesville through the Gainesville Utilities Department operates an electric utility system serving approximately 17,000 retail customers in the city and adjacent portions of Alachua County, Florida. Gainesville's electric operation was previously isolated from other electric utility systems. In order to maintain a power supply sufficient, while so isolated, to meet its requirements in the event of the single contingency of forced outage of its largest generating unit, Gainesville had to maintain reserve electric generating capacity equal to at least the capacity of its largest unit, 50 megawatts (App. 223, 224).

The Federal Power Commission, by order issued in November 1968 (App. 352-381), directed Florida Power to permit Gainesville to interconnect its system to that of Florida Power, not at Florida Power's substation in Gainesville where voltage is 69 kv, but at Florida Power's Archer substation some miles away where a north-south 240 kv backbone transmission line of Florida Power is tapped (App. 375). It was recognized that, upon interconnection, the supply of power by Florida Power to Gainesville from its backbone transmission system in the event of a forced or planned outage of equipment on the Gainesville system would be "inevitable, unavoidable and instantaneous" at all times (App. 188, 189). For this reason, the Commission directed that, after interconnection, Gainesville need provide electric generating capacity only

15% in excess of its estimated load,—*less than one third its previous requirement for reserve capacity* equivalent to the size of its largest unit (App. 444, 445). Further, it was recognized that the interconnection of the Gainesville system at Archer substation would play no role in strengthening Florida Power's service in and around the City of Gainesville from Florida Power's Gainesville substation, if such service in fact needed strengthening (App. 79, 80).

The Federal Power Commission provided that, upon interconnection, Gainesville should reimburse Florida Power for the allocated annual costs associated with Florida Power's having to provide frequency regulation through the interconnection for Gainesville (App. 378). But the Commission made no provision for Gainesville to reimburse Florida Power for any part of Florida Power's cost of maintaining the standby capacity instantaneously available to Gainesville at all times from the Florida Power backbone transmission system.[1]

Florida Power had asked that Gainesville share pro rata with Florida Power's own customers the costs of the transmission aspects of the standby capacity service, to the extent of the capacity in Gainesville's largest unit, so that Gainesville and Florida Power's other customers would each pay annual costs of $3.08 per kilowatt for such service based on 1970 load projections (App. 194). Terms ordered by the Commission to govern other services gave Gainesville the benefit of the low incremental costs of energy from Florida Power's large efficient power supply system, essentially as Florida Power itself had proposed. It is undisputed that nothing in the other terms and conditions provides any compensation to cover transmission fixed costs.

Upon appeal by Florida Power, the Court of Appeals for the Fifth Circuit reversed the Federal Power Com-

[1] The Commission's examiner had recommended compensation by Gainesville to Florida Power, although not in the precise form proposed by Florida Power.

mission on the ground that the Commission had failed to provide the "reasonable compensation" by Gainesville to Florida Power to which the latter was entitled under the Act for the cost of the capacity standby service which Florida Power would be required to provide upon interconnection of the two systems. The Court noted that, if the Federal Power Commission Order were allowed to stand, the allocated fixed cost of this service to Gainesville would have to be borne by Florida Power's customers, and "[T]hey are entitled to not have to carry the entire responsibility for providing an extremely valuable service" (App. 502-3). Gainesville had initiated the proceeding to obtain this "valuable service."

ARGUMENT

I.

The Commission equated the statutory requirements that (i) costs be "apportioned" and (ii) the supplier receive "the compensation or reimbursement reasonably due" it, as meaning that the recipient of a valuable service need pay only the direct, immediate *incremental* cost to the supplier of furnishing such service. The Court below properly held that the Commission erred in doing so and that the Commission must provide "reasonable compensation" to the supplier, in a manner to be determined by the Commission.

It is undisputed that Florida Power has "costs"—substantial "costs"—involved in providing a backbone transmission network. (App. 144).

It is also undisputed that Gainesville will, by reason of the interconnection, share in the benefits that such Florida Power costs will make available. Such benefits to Gainesville will include (1) greatly increased reliability in

service to its own customers (App. 56), (2) an immediate reduction in the level of its generating reserve requirements (Gainesville's required generating reserve, at its 1970 load level, will be immediately reduced from 50 MW to 15 MW) and (3) an annual saving of approximately $520,000 (App. 49; Exhibit 81, introduced by Gainesville at R. 1148).

The significance of these benefits to Gainesville was agreed upon by all parties to the proceeding. All witnesses agreed that, upon interconnection, standby capacity equal to Gainesville's entire average load would be instantaneously available at all times to Gainesville from Florida Power. All witnesses agreed, also, that, upon interconnection, Gainesville would no longer be compelled to maintain reserve generating capacity equal to the largest Gainesville unit (50 MW).

Given these facts, there can be no question about the statutory right of Florida Power to reasonable compensation or reimbursement for the Florida Power costs properly apportionable to Gainesville.

The Commission attempts to portray Florida Power as seeking a share of the very large benefits that Gainesville receives from the interconnection. That is not the situation at all. If Florida Power were seeking to share in Gainesville's benefits, rather than merely to receive a pro rata share ($154,000) of Florida Power's apportioned costs, Florida Power's request for payment by Gainesville would have been much larger (App. 193).

Once these elements are recognized, it becomes clear that the real issue is, as the Court below demonstrated, whether Gainesville is providing something of sufficient value to Florida Power to constitute the reasonable reimbursement or compensation to which Florida Power is entitled. The fact is that Gainesville will not provide, and cannot pro-

vide, services of any significant value to Florida—let alone services of sufficient value to meet the statutory standard of "reasonable" compensation or reimbursement.

What are the benefits to be provided by Gainesville to Florida Power upon which the Commission relies? As the Court below properly found, they are illusory and speculative.

The Commission claims as benefits to Florida Power the generating capacity that will be provided by Gainesville. A Commission staff witness purported to find such value by a mathematical exercise in which he assumed that Gainesville would have a higher level of generating reserve capability than Florida Power. But the Commission order only requires Gainesville to maintain the same level of generating reserve as Florida Power, and this reduction in necessary generating reserve is precisely one of the benefits Gainesville was seeking.

The simple truth is that many of Gainesville's generating units are so small[1] and so antiquated that they should not be operated and, indeed, for the most part will not be operated (App. 92-96; 206). They should be retired from service.

Commission staff witnesses ascribed increased reliability to Florida Power from the continuous operation of these small units of Gainesville (App. 229, 438).[2] The Commission staff witness also ascribed spinning reserve benefits to Florida Power from Gainesville. But Gainesville can only pro-

[1] 12.6 MW, 5 MW, 1 MW.

[2] The Court below pointed out in this connection:

"The Presiding Examiner concluded that Gainesville could contribute only 6 mw, 3 mw, and 2.5 mw to Florida Power's system reliability. It seems clear that these amounts are too insignificant to have meaning or value to Florida Power, which must have emergency power instantaneously available (spinning reserve) to withstand outages of more than 400 mw. Moreover Florida Power's backbone transmission network has so many power sources more efficient and economical than Gainesville's small generators it is totally unrealistic to consider the City's system a significant power source." (App. 494 for 6)

vide spinning reserve at all times if it continues to operate the small and inefficient generating units that are made unnecessary by the fact of interconnection and which Gainesville's own witnesses admitted would in fact be shut down. Staff recognized that the units would not be operated and that there would be no spinning reserves on Gainesville's system at times (App. 474). To describe Gainesville's units under these circumstances as providing a "fast rate of response" is to deny an essential purpose and intended result of the interconnection. Gainesville is, in fact, anxious to discontinue operation of the type of unit that the great bulk of the industry ceased operating decades ago.[1]

Even the Commission's claim that Gainesville will provide added reliability to Florida Power in an area where Florida Power has no generating facilities does not withstand analysis. The new interconnection is not in the Gainesville area, but some miles away at Archer. Through this interconnection at Archer, Gainesville can provide no added reliability to the Florida Power facilities in the Gainesville area. A Gainesville witness specifically noted that if Florida Power wished additional reliability in the Gainesville area, Florida Power should seek and pay for an interconnection with Gainesville at Florida Power's Gainesville substation (App. 79, 80). Florida does not need, nor can it justify, a fourth supply of power to this substation (App. 162-163).

For these reasons, the Court below properly found that the benefits to Florida Power that the Commission attributed to Gainesville were non-existent or illusory.

In the Commission's brief, at page 9, it is stated that the Commission found that neither Florida Power nor other

[1] Another Presiding Examiner recently suggested, in his recommended decision, issued January 14, 1971, in *Village of Elbow Lake, Minnesota* v. *Otter Tail Power Corp.*, Docket No. E-7278, that a requirement that a public utility give capacity credit, in an interconnection ordered under section 202(b), for municipally-owned small generating units regardless of the practical value of such units, violates by indirection the provisions of section 202(b) that the Commission may not thereunder require a public utility to enlarge its generating facilities (at page 19).

power companies had imposed standby charges comparable to those being sought from Gainesville in any contracts covering voluntary interconnections. The reference is to the Commission's Opinion at App. 360, n. 3, which, itself, makes further reference to the Staff's review of pooling agreements and bilateral arrangements.

Staff's review of bilateral arrangements is limited to the statement that the small systems listed in its Exhibit 99 do not "pay an annual transmission charge similar to the $3.08 per kw per year recommended by [Florida Power]." (App. 441). Exhibit 99 lists a total of only 23 agreements, including one proposed agreement, which comprise *some* of the contracts between only seven named public utilities and small systems[1]. Staff's most extensive discussion of a particular formal pooling agreement concerns that of the PJM pool (App. 452, 453).

This evidence is, of course, extremely limited, but, even so, it shows that it is industry practice to provide compensation in money or services between systems which have an economic equivalent to the capacity standby charge proposed by Florida Power.

The terms and conditions of an interconnection agreement are a package and an imbalance in contribution among systems in one phase may be compensated for by an offsetting imbalance of obligations in another phase. For instance, disparate power supply reserve requirements in an interconnection agreement may cover an imbalance in transmission facilities of value to the interconnected systems. In this record it is pointed out that one of the interconnected Florida systems agreed to maintain a power supply reserve requirement larger than the other systems to make up for some lack of mutuality in other aspects of its interconnected system operation (App. 167).

Where all enumerated services are provided for at cost and there is a lack of mutuality in power supply standby

[1] The Commission has elsewhere described the inventory of some 3,600 systems in its *National Power Survey* (1964).

services, it is not at all unusual to specifically provide a charge for such service.

In reviewing any interconnection agreement, a knowledge of the particular systems is necessary to understand their mutuality. Also, all of their terms must be read before any conclusions are drawn as to the purport of the instrument.[1] The Long Island Lighting Company agreement with the Village of Freeport, New York, for instance, is listed in Exhibit 99 as an example of an interconnection agreement which does not provide standby transmission charges. It should be recognized, however, that, while there is no charge for standby service as such, provision is made for emergency capacity to be supplied by Long Island in the event of failure of the Village's equipment at the rate of 20 cents per kilowatt per day or fraction thereof. In the event of an outage of a Village generating unit of more than a few days, the charges per kilowatt could equal or exceed those proposed for Gainesville. Such a provision, of course, is an alternative to a standby transmission service charge.

Rate Schedule No. 55 of Kansas City Power and Light Company (Rate Schedules 54 and 56 are listed on Exhibit 99) provides that the firm generating capacity of the City of Ottawa, Kansas, system is to be considered its total generating capacity "less the number of kilowatts equal to its largest single generating liability." Provision is made for providing "insured reserve" capacity service to the City at $9.50 per kilowatt year. This provision also is an alternate for transmission standby charges.

A good example of a capacity standby charge which is expressed as directly related to transmission facilities is to be found in Article IV of contracts between the United

[1] A Staff witness noted: " . . . you have to keep in mind all of the services and all of the benefits and all of the detriments throughout the totality of the arrangement and I think that any one particular service schedule or service to be rendered has to be viewed in the light of the total or complete arrangement". (App. 473)

States of America, itself, and certain systems in Arkansas and Missouri, generally comparable to the Gainesville system. The eight customers with such service in 1967 are listed in the Senate Hearings on Public Works Appropriations, H.R. 17787, 89th Congress, 2d Session, Part III, at 672. Five potential customers under negotiation for standby service are also listed. The provisions for standby service in Article IV of these contracts (see, for instance, Contract No. 14-02-0001-1214 between the Southwestern Power Administration with the City of Kennett, Missouri) set forth a "standby service facility charge" in addition to payments for actual use of the standby service. The provision reads as follows:

> Section 6. *Standby Service Facility Charge.* It is recognized that in order to deliver, receive and exchange power and energy as provided under this Article IV [Standby Service by SPA], certain expenses and costs have been and will be incurred by SPA in connection with the construction, maintenance, operation, and replacement of transmission and related facilities. As consideration to SPA for the construction, maintenance, operation, and replacement of such transmission and related facilities, Kennett shall pay to SPA a Standby Service Facility Charge computed under the formula—
>
> $$SSFC = \$1.20 \times (LU - RP),$$
>
> with the factors defined as follows:
>
> SSFC = the total Standby Service Facility Charge to be paid by Kennett to SPA each Contract year.
>
> LU = the capability of the largest generating unit in the "Kennett Generating Plant" as set forth in Exhibit "3".

RP = the maximum number of kilowatts or Reserve Power which Kennett is obligated to furnish and deliver to SPA under Section 3 of this Article IV.

One-twelfth of such charge shall be paid by Kennett to SPA each month.[1]

In connection with the PJM pooling arrangements, the Staff witness testified as follows:

> "... Atlantic City and Delmarva, until quite recently, had to maintain higher reserves than the other P-J-M members did, and didn't have equal treatment as the other members. In the last few months a slight modification has been made to give them greater benefits. But the reason for that was that the members of P-J-M operate on a free flowing tie basis and have to have great transmission capacity internally and externally, and to the extent that they couldn't qualify as full members because of having transmission capacity that was less than what the other members were maintaining, they were treated as satellites, and still are until they can qualify as members." (App. 452, 453)

The Florida pool also operates on a free flowing tie basis (App. 159). Gainesville's proposed transmission and interconnection has not been coordinated with the transmission plans of Florida Power (App. 434)[2] or other system in the

[1] With the exception of the amount of the dollar rate and the factor RP, the formula is the same as that proposed by Florida. The factor RP gives recognition to the fact that the contract requires Kennett to provide SPA energy, in which SPA is deficient.

[2] Gainesville's plans may actually make it necessary for Florida to strengthen its transmission facilities at the Archer substation earlier than if there were no interconnection. (App. 231)

Florida Pool. And yet, the Commission would accord Gainesville much more favorable terms than the much larger Atlantic City and Delmarva systems receive under similar circumstances in the PJM pool.

For the Commission to be ignorant of standby charges in interconnection agreements, whether they are specifically so denominated or whether they are encompassed in the whole package of terms and conditions regarding an interconnection, transcends belief. The whole attempt in interconnection agreements is to achieve mutuality, and standby charges are an available tool to this end just as much as any other burden imposed by an interconnection agreement.

The requirement of section 202(b) that one utility may be forced to interconnect with another only if it receives reasonable compensation or reimbursement of its apportioned costs—i.e. of more than its direct and immediate *incremental* costs—is consistent with other provisions of the Federal Power Act. The same concept of a fair apportionment of costs and reasonable compensation therefor which is found in section 202(b) is also found in section 10(f) of the Federal Power Act. Section 10(f) requires payment by the non-federal owner of a benefited downstream hydroelectric project of a share of the cost of the headwater dam and reservoir which provides the benefits. *South Carolina Electric & Gas Co.* v. *Federal Power Commission,* 338 F. 2d 898 (CA 4, 1964). Such payment is required even though the headwater improvement was economically justified without consideration of such payments and in operation prior to the construction of the downstream project. *Columbia River Basin, Headwater Benefits Investigation,* 29 FPC 238 (1963); 31 FPC 1044 (1964); 33 FPC 300, 907 (1965); 35 FPC 212, 225, 1030 (1966).

II.

The Commission's repeated characterization of the standby capacity which Gainesville will receive from the interconnection as non-firm and as a "when, as and if available" service is a distortion of reality, refuted by the fact that the Commission felt able simultaneously to direct a reduction in the generating capacity which Gainesville will need to provide for itself to maintain reliability.

In its brief to this Court, at page 9, the Commission recites its finding that neither Florida Power nor other power companies had imposed standby charges comparable to those being sought from Gainesville in any contracts covering voluntary interconnections. This finding is evidently based upon Exhibit 99 and is discussed under Point I, above. Apparently in an attempt to sustain this finding, the Commission's brief, at page 23, seeks to distinguish the standby service for which charges are made by the Southeastern Power Administration of the U. S. Department of the Interior from the standby service which Gainesville will get from the Florida Power transmission system upon interconnection. The Commission's brief states in connection with the SEPA contracts that

> "... Standby charges are entirely appropriate in such cases since the capacity reserved must be made available to the purchasers on demand."[1]

The Commission's brief contrasts this situation with that in the current case by stating that Florida Power would be

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[1] Contrary to the Commission's characterization of SEPA's standby service as "firm", the contracts, in subsection 2.3(c), provide: "Inasmuch as the same or portion of the same 100,000 kw of standby capacity ... has been sold for use by each of the three members of the Pool, ... first call ... shall go to the Pool member first experiencing an emergency outage ..." See 39 FPC 992 (1968)

under no firm obligation to provide power or reserves to Gainesville. At page 29, the Commission's brief picks up the point again, stating that Florida's only obligation is to permit Gainesville to draw power in emergencies

> ". . . to the extent, and only to the extent, that such emergency power is available on the interconnected network."

Such statements are a distortion of the facts of interconnected electric utility system operation. Because of the physical characteristics of Florida Power's system, under interconnected operation, energy will automatically flow to Gainesville, whenever Gainesville's generation is interrupted for any reason, without action on anyone's part (App. 188). Only in the event of *force majeure*, which could knock out any "firm" service, will Gainesville not receive the power that it requires from Florida Power.

If the foregoing were not the actuality, the Commission would have placed in jeopardy the electric service to all Gainesville's customers by directing that Gainesville be permitted to reduce its own capacity reserves to a level approximately one-third the size of its largest unit.

III.

The effect of the Commission's holding is that the Commission may grant to an electric utility the privilege of connecting its system to the transmission facilities of a second system and of receiving all the benefits which such facilities make available without sharing in any of its fixed costs or otherwise compensating the second system in a meaningful way. This is directly contrary to industry practice, will disrupt existing interconnection agreements and will interfere with industry efforts to achieve economies while maintaining the reliability of regional power supplies.

Recognizing that the great bulk of interconnections are the result of voluntary arrangements entered into at arms-length between utilities and that such voluntary arrangements provide the appropriate standard by which to determine the terms and conditions for interconnections which it should impose under section 202(b), the Commission then purported to ascertain what industry practice is. But here it was misled, apparently by the oversimplifications indulged in by the Commission witness and his skimpy sampling from the wealth of available data.

There is a substantial public interest to be served by the continued encouragement of voluntary interconnections. Such interconnections promote reliability and economy, and the Commission has recognized that an equitable apportionment of costs, between all who benefit from such costs, is a *sine qua non* of the broader pooling which, in other contexts, it purports to be encouraging. See *post*, at 21, 22.

But the Commission cannot have it both ways. If broader voluntary pooling with the resultant increased reliability and economy are the objectives—as we believe they are—, then the Commission must not distort the nature and effect of the industry practice by which the existing, broad voluntary pooling has been achieved. If, on the other hand, the Commission's objective is simply to relieve small systems from sharing any costs of the reliability provided by larger systems, the Commission should frankly admit that it is rejecting industry practice as its touchstone.

We choose to believe that the Commission simply did not know what it was doing here—that while it verbally accepted the principles by which voluntary interconnections have been established, its lack of detailed familiarity with the *application* of those principles caused it to reject in fact that which it espoused in form.

The Petitioners talk in terms of the standby equalization charge being a form of penalty to the last utility to join the interconnected systems. Nothing could be further from the fact.

The customers of the first two utilities to interconnect in a region initially bear the costs of such interconnection. Certain benefits flow to them from such investment. When those benefits are extended to the customers of a third utility, it is only right that the customers of the third utility either provide an equivalent substantive benefit to the customers of the first two utilities which interconnected, share the costs which made the benefits possible, or provide some combination of benefits and cost sharing as a means of effecting reasonable compensation.

This is not a new theory devised for this particular case. It is industry practice. It is fair and equitable to the customers of each system.

The Commission's brief at pages 21 and 22 evidently claims that the same rules do not apply to "sharing of transmission system responsibilities." The suggestion in the Commission's Brief is that under industry practice each system in a pool is held responsible solely for the costs of transmission facilities in its own service area. A good example directly to the contrary of the Commission's suggestion is the contract between the operating subsidiaries of the Southern Company system, which provide electric service in the states of Florida, Mississippi, Georgia and Alabama. The companies have been interconnected and have operated as a pool for many years; yet, when transmission facilities and interconnections with other utility systems are installed for the benefit of the pool, no matter which company installs, owns and operates the facilities, the other companies contribute to the costs of the facilities. In 1966, for example, Georgia Power extended a line from

its North Tipton substation 64 miles through Georgia to the Florida state line to interconnect with the line of Florida Power with which Gainesville also wishes to interconnect at the Archer Substation. The line provided pool benefits and its annual fixed charges have therefore been shared by all four of the subsidiaries, each operating in a different state. Southern System FPC Rate Schedule Nos. 34 *et seq.*

In the New England region currently, a 345 kv transmission line is being extended from Wiscasset, Maine, the site of a large atomic plant scheduled for 1972 service, to connect at the New Brunswick border with a 345 kv line of the New Brunswick Electric Power Commission. The transmission line will provide benefits to the entire New England region. In order to finance and support the line, a new company was formed, the Maine Electric Power Company, which is owned by the utilities in the State of Maine. All the major utilities in New England, from Connecticut north, however, have contracted with the new company to pay the annual costs of the line, not covered by revenues for use of the line, for the next 20 years. Revenues for firm power transactions over the line are anticipated to recover approximately 50% of the annual costs. The other 50% of the costs will be shared via dollar payments by the New England utilities in proportion to their size in order to achieve pool benefits of stability, emergency power supply, and for assistance in maintaining low generating reserve requirements.

The responsibility for the fixed costs of the 500 kv backbone transmission system of the Pennsylvania-New Jersey-Maryland pool is assigned one-third to system reliability and two-thirds to the delivery of the output of jointly-owned mine mouth generating stations to the load centers of the owners of the stations. The costs of the portion allocated to reliability is shared by all members of the pool in propor-

tion to size of load without regard to ownership of the transmission facilities. Payment for these shared costs is made in dollars.[1]

In cases where each system provides within its own service area the necessary transmission to support a pool, without specific compensation in the interconnection agreement package for the benefits which its facilities bring to the pool, it is normally because the investment in transmission facilities on the other systems or other benefits provided without compensation by such systems give mutuality to the agreement without any exchange of dollars. Where there is no mutuality, dollars are exchanged, as in the foregoing examples.

In the New England region, one of the suggestions which has heretofore met wide approval in connection with the proposed formation of a region-wide pool calls for all the costs of all the existing and future backbone transmission in the region, irrespective of ownership, to be shared in proportion to peak load by all electric utilities in the region.

Under industry practice, it is recognized that backbone transmission facilities provide pool benefits, and that their costs should be shared in services or dollars by the electric systems which benefit from them.

The Federal Power Commission purports to recognize the fact that small systems may not be able to provide services constituting adequate compensation for costs from which they benefit. In its publication, *Prevention of Power Failures, A Report to the President,* Volume I, at 39, it states:

[1] Of the eight non-affiliated and four affiliated companies comprising (or satellites to) the pool, only five own any appreciable share of the 500 kv transmission facilities and their ownership shares of such transmission facilities are not proportionate to their ownership shares in the jointly-owned generating stations or their relative peak loads. Seven of the companies in one case and nine in another participate in ownership of the jointly-owned generating stations. The Staff witness did not make those facts clear when he described the arrangement at App. 452.

> . . . Small systems participating in power pools or coordination agreements must expect to carry their share of responsibilities associated with interconnected planning and operation. Their generating capacity and operating reserves must be maintained and must be operated under standards and controls which are commensurate *in quality* with those of the larger systems. To the extent it may be physically impossible for a small system to fulfill all such obligations *in kind*, equalization should take the form of exchanging power or dollars among the systems.

At page 44 of the Report the Commission quotes from its Advisory Committee on the Reliability of Electric Bulk Power Supply, as follows:

> Transmission must be recognized as the principal medium for achieving reliability, both within a system and through coordination among systems. It is the cohesive force which ties together power systems. Cascading power failures are usually the result of insufficient capability within the transmission links of a system or group of systems to withstand the sudden demands placed upon them by reason of disturbances arising within or outside the system. In the interconnected networks, transmission has the multiple functions of energy transportation and system integration. The latter involves the need, not only to dispatch generation economically, but also to handle emergency flows resulting from facility outages and system disturbances which will create sudden power swings. *This requires maintaining at all times margins of transmission capability above scheduled transmission line flows so as to tolerate such power swings.*

The seven miles of 115 kv line being installed by Gainesville to interconnect its system with the backbone trans-

mission system of Florida Power Corporation do not fit into the definition of transmission capability needed for reliability "so as to tolerate such power swings." The line is a radial line to the backbone transmission system. Florida Power has excluded such radial lines in determining its backbone transmission investment (App. 192). While it is true that, in the event of forced outage of Gainesville units, all necessary power will immediately flow through the line from Florida Power's system to supply Gainesville's load, the opposite is not true because of the operative physical and electrical facts pertaining to the interconnected Florida Power system and the Gainesville system. While, if Gainesville units in excess of its own load were operating, Gainesville would have the theoretical capability of pushing small amounts of power out into the Florida Power transmission system, this fact will not even be noted by the dispatchers controlling the power supply on the Florida Power system or any other system. It would simply be recorded by meters and accounted for at the end of the accounting period.

The Commission's brief seems to imply some benefit to interconnected system reliability from the small Gainesville units which can be brought on the line within a two-hour period. The Commission has encouraged the electric utility industry in its programs which have lead to the investment of literally billions of dollars to avoid any interruptions in service, let alone two-hour interruptions of service. Gainesville may have the ability to crank up a few megawatts of capacity held in cold standby in a matter of hours after someone telephones the City. But for the Commission to indicate such ability is in some way a proportionate reimbursement for the instantaneous electric power supply continuously available to it from Florida Power's system is to make a mockery of the whole reliability program.

In the final section of its brief, the Commission seeks to clothe itself with the mantle of administrative agency expertise, asserting that the court below "failed to give appropriate deference to the Commission's judgment in this highly complex and technical field" (Commission brief, at 33-34). But what is the standard of expertise that the Commission asserts is controlling? The Commission's brief expressly states that:

> "The vast majority of interconnections between utilities are effected voluntarily. * * * In contested interconnection cases, therefore, it is appropriate that Commission decisions establishing compensation terms take into account the terms of current interconnection arrangements negotiated at arms length." (Commission brief, p. 19)

Thus, by the Commission's own criterion, it is the *industry practice* that should establish the pattern for its action. Yet, the Commission places sole reliance upon the conclusions of a Staff witness, based upon a summary review of industry practice—with the deficiencies hereinbefore noted—, in informing this Court as to industry practice.

Since informed judgment about *voluntary* industry practice is the test and the Court below directed remand, the Commission will have an opportunity to ascertain what the industry practice is in fact and to correctly apply industry practice.

CONCLUSION

The decision of the Court of Appeals should be affirmed, since the Court correctly held that the Commission had not discharged its statutory mandate to provide Florida Power with the "compensation or reimbursement reasonably due" it for its "allocated fixed cost" of providing the "extremely valuable" service sought by Gainesville and that the proceedings should be remanded to the Commission for the Commission to fix a formula for determining reasonable compensation.

Respectfully submitted,

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